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No. 308

Supreme Court of the United States

OCTOBER TERM, 1968

JAMES J. RETTER, *Petitioner*,

v.

THE UNITED STATES, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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July 1968

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Supreme Court of the United States

OCTOBER TERM, 1968

No.

JAMES J. RITTER, *Petitioner,*

v.

THE UNITED STATES, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioners pray that a writ of certiorari issue to review a judgment of the United States Court of Claims entered in this case on April 19, 1968.

OPINIONS BELOW

The Court of Claims adopted the opinion, findings of fact, and conclusion of law of its trial commissioner, all of which appear as Appendix A (p. 1a, *infra*). The opinion is reported at 393 F.2d 823.

JURISDICTION

The opinion of the Court of Claims, which constitutes its judgment in this case, was filed on April 19, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. § 1255(1) (1964).

QUESTION PRESENTED

Whether reimbursements to an employee by his employer for moving expenses incurred by the employee and for a loss suffered in the sale of his house, both occasioned solely by a required transfer of his place of employment for the convenience of his employer, are taxable to the employee as ordinary income.

STATUTES INVOLVED

Sections 61(a), 62(1), 62(2), 162(a), 217, 262, 1001(a) and 1001(b) of the Internal Revenue Code of 1954, which are reproduced in Appendix B (p. 1b, *infra*).

STATEMENT OF THE CASE

The facts, set forth in greater detail in the report of the trial commissioner (p. 2a, *infra*), are basically undisputed. They squarely pose the central legal issue decided below and presented here, namely, whether reimbursements that do no more than relieve an employee of expenses and loss suffered in a change of job location required by his employer are nonetheless taxable as ordinary income to the employee.

Petitioner James J. Ritter was in 1957 the Regional Controller for the Data Processing Division, Western Region, of International Business Machines Corporation (IBM), in whose employ he had been since 1952

(p. 22a, *infra*). During the summer of 1957 IBM decided to move its Western Region headquarters from San Francisco, in a suburb of which Ritter resided and owned a home, to Los Angeles. The decision was prompted solely by the requirements of IBM's business, including the presence of major customers in Southern California and enlargement of the company's Western Region to embrace Texas (p. 31a, *infra*). Ritter was among the employees IBM determined to transfer, because his position was a headquarters post and because it was company policy to provide a new office with a cadre of experienced personnel (pp. 26a, 31a, *infra*). The relocation did not involve a promotion or increase in salary for him (p. 32a, *infra*).

Ritter, although comfortably settled in his community and preferring to live near San Francisco (p. 33a, *infra*), had only two alternatives to accepting the transfer and moving his home and family to Los Angeles: he could have resigned from IBM entirely, sacrificing various accrued benefits as well as his job, or he could have taken a substantial demotion to the post of commission salesman and remained in the IBM San Francisco office with a probable sharp decline in income (pp. 32a-33a, *infra*). Thus, Ritter concluded, "his only realistic choice" was to transfer, and he did so in the fall of 1958, selling his house near San Francisco and purchasing a new home in a Los Angeles suburb (pp. 22a, 32a, *infra*).

To soften the financial impact of required relocation, IBM—like many other corporations and the federal government (see pp. 13-14, *infra*)—reimburses various expenses and losses of employees caused by company-directed transfers. IBM's reimbursement

policy applies equally to all permanently transferred employees without regard to position or salary (p. 30a, *infra*).[1] Accordingly, Ritter was reimbursed for certain out-of-pocket expenses he had incurred, each related to and caused by the move, in the amount of $6,511.86. The expense items, detailed by the trial commissioner (pp. 3a n. 1, 22a-24a, *infra*), included travel expenses of Ritter between the two cities, transportation expenses of his family and household goods, expenses of selling his San Francisco house such as brokerage fees, expenses of purchasing the Los Angeles house such as closing payments, related expenses such as the refitting of old furnishings like drapes to fit the new house, and certain maintenance costs during the period in which the old house had been vacated but not sold.

IBM also reimbursed Ritter for a $4,737.50 loss incurred on the sale of his San Francisco home (p. 24a, *infra*). This, too, was in accord with IBM's established practice in transfer cases, based upon recognition that the forced sale of a house may require offering it at an inopportune time. The amount reimbursed was the difference between the fair market value of Ritter's old house—fixed by several independent appraisers in what the trial commissioner found to be "a reasonable and objective manner"—and the lesser amount received in the forced sale (p. 30a, *infra*).

The expense items and the house loss resulted from a move dictated by IBM's transfer of Ritter entirely for its own business convenience, each was properly

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[1]IBM maintains two schedules or policies designating those expenses and losses that it will reimburse and specifying in advance the applicable procedures (pp. 22a-25a, 27a-30a, *infra*).

documented, and none was unreasonable in amount (pp. 3a, 24a, 31a, *infra*). The reimbursements, as the trial commissioner further found, did not flow from any agreement with, or intention on the part of, IBM to use the job transfer to increase Ritter's compensation (pp. 30a, 33a, *infra*). The transfer did not increase Ritter's net worth by a penny, but actually decreased it because of substantial move-related expenses that IBM did not reimburse and less favorable mortgage terms obtained by him at the new residence (pp. 33a-34a, *infra*).

Despite these circumstances the Internal Revenue Service concluded that the expense reimbursements, except those covering transportation of Ritter, his family and his household goods, were "income" to Ritter under section 61 and were not deductible as business expenses under sections 62 and 162.[2] The Service also concluded that the house loss reimbursement was ordinary income, rejecting Ritter's treatment of this payment as part of the "amount realized" on the sale of his house under section 1001. Pursuant to that section he had offset the payment against his adjusted basis on the house and paid a capital gains tax on the excess.

The Service's treatment of the reimbursements, although they did no more than alleviate the expenses and loss caused by the company-directed move, increased Ritter's taxable income almost fifty percent and raised his tax by $3,324.01 (p. 25a, *infra*). Ritter paid the additional tax and brought suit for refund in the Court of Claims, where the trial commissioner

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[2] Citation of specific sections throughout will refer to the Internal Revenue Code of 1954 unless otherwise identified.

ruled that the expense reimbursements were income, the expenses were not deductible, and the property loss payment was ordinary income and not part of the amount realized on the sale of Ritter's house. After holding the case under advisement for a full year, the Court of Claims adopted the trial commissioner's report *in toto* and without further discussion. Judge Davis, joined in part by Judge Skelton, dissented from that portion of the court's decision that concluded that the expense items were not deductible from income as business expenses.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Misconstrues the Leading Relevant Decisions of This Court, Creates a Direct Conflict With the Tax Court, and Sanctions a Blatantly Inconsistent Position Taken by the Internal Revenue Service.

In holding that the reimbursements constituted income to Ritter, the Court of Claims rested its decision upon *Commissioner* v. *Glenshaw Glass Co.*, 348 U.S. 426 (1955), *Commissioner* v. *Smith*, 324 U.S. 177 (1945), and *Commissioner* v. *LoBue*, 351 U.S. 243 (1956). Yet precisely the opposite conclusion is impelled by examination both of *Glenshaw*, which classed as income punitive damages awarded to the taxpayer, and of *Smith* and *LoBue*, which similarly taxed stock options granted by employers to their employees.

In all three cases, the transactions brought to the taxpayers what the *Glenshaw* opinion called "undeniable accessions to wealth." 348 U.S. at 431. Here, on the contrary, the reimbursements to Ritter merely offset employer-caused expenses and loss, and the net result of relocating was a substantial financial loss for

Ritter.[3] The opinions in *Smith* and *LoBue* stressed that the stock options in question amounted to "compensation" for past or future services. Here, again in marked contrast, the reimbursements "were not taken into account in any way by the management of IBM in determining appropriate levels of compensation for employees" (p. 30a, *infra*). Not merely IBM but industry at large views such reimbursements as non-compensatory, *Wall St. J.*, Dec. 9, 1965, p. 1, and the Chairman of the Civil Service Commission, obtaining like reimbursement for federal employees, told Congress: "[T]his is not compensation, this is not additional income. This is reimbursement, and therefore, should not be taxable."[4]

The lower court has thus adopted a reading of this Court's opinions in *Glenshaw, LoBue* and *Smith* which sanctions indiscriminate inclusion of almost any pay-

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[3] It is, of course, the transaction taken as a whole that determines taxability and not the mere receipt of a payment. *E.g.*, United States v. Supplee-Biddle Hardware Co., 265 U.S. 189 (1924) (life insurance proceeds not income to corporation); Jones v. United States, 60 Ct. Cl. 552 (1925) (army officer quarters allowance not income); Rev. Rul. 59-92, 1959-1 C.B. 11 (research grant not income).

[4] Hearings Before a Subcommittee of the House Committee on Government Operations on H.R. 10607, 89th Cong., 1st Sess. 48-49 (1965). The Department of Defense has taken the same position on similar payments made to servicemen, its spokesman declaring that they are "not intended to be compensatory, but [are] made solely to insure that members of the uniformed services do not incur financial loss" through the exigencies of national defense. Letter from Assistant Defense Secretary Paul to Acting Internal Revenue Commissioner Harding, Aug. 6, 1964 (reprinted at p. 12 of Brief Amicus Curiae of Associated Industries, England v. United States, No. 603, Oct. Term, 1965, U.S. Sup. Ct.).

ment as income. Yet numerous examples of payments held not to qualify as income forbid this approach, see, *e.g.*, n. 3, *supra*, and this Court has specifically warned that whether a payment is income depends on analysis of its own salient characteristics. *Commissioner* v. *Duberstein*, 363 U.S. 278, 287-89 (1960). In abstracting the most general language from the Court's opinions, the decision below has overlooked the indicia of income stressed in those very cases—overall enhancement to the taxpayer and compensatory character of the payment. The pertinent analogy in this case is to an employer's reimbursements to his employee for office supplies, for business travel costs, or for working tools initially paid for by the employee. All are direct payments which, like those involved here, are occasioned by the employer's needs, all work no net gain for the employee, and all are viewed by neither employer nor employee as compensation; all are excludable from income, as even the Service appears to concede. See, *e.g.*, *Siegfried* v. *United States*, 55-2 U.S. Tax Cas. para. 9531 (N.D. Okla. 1955); Treas. Reg. § 1.162-17(b)(1); Rev. Rul. 67-30, 1967-1 C.B. 9.

The Court of Claims' refusal to allow deduction of the reimbursed expenses as "business expenses"—the alternative to excluding them from income—is equally flawed by its misreading of this Court's leading decision in *Commissioner* v. *Flowers*, 326 U.S. 465 (1946). *Flowers*, concerned with the analogous problem of travel expenses, focused upon the requisite linkage between the business and the expense and demanded a "direct connection between the expenditure and the carrying on of the trade or business of the taxpayer or of his employer." *Id.* at 470. As the only requisite

of deductibility subject to question in this case,[5] that "direct connection" is surely provided by the settled facts that Ritter was transferred for IBM's convenience and moved solely to retain his job, and that all reimbursed items "were occasioned by [Ritter's] 1958 move . . . . [T]hey would not have been incurred but for the move" (pp. 24a, 31a, *infra*). As the dissent in this case notes, the Tax Court has already held to be deductible employee moving expenses that cannot reasonably be distinguished from those at issue here (p. 19a, *infra*).

As for the house loss reimbursement, the lower court similarly erred in refusing to recognize it as part of the amount realized on the disposition of the property under section 1001. Its opinion disposed of the payment by calling it "in essence no different from" the expense reimbursements already classed as income under the *Glenshaw* trilogy (p. 16a, *infra*). Yet this is a still more perverse misreading of the three cases since certainly none faced the question whether a payment was a return of capital under section 1001. So classifying the payment would do no more for Ritter than to tax him just as if his involuntary transfer had not intervened and he had received the fair value from a purchaser in a normal sale. Since the employer's reimbursing payment is simply a substitute for money the purchaser would have paid Ritter absent the forced sale, to treat it as part of the amount realized on the

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[5] It is indisputable that Ritter himself is engaged in "trade or business" even though an employee, *e.g.*, Dean L. Phillips, 9 CCH Tax Ct. Mem. 501 (1950); I.T. 3373, 1940-1 C.B. 28. The widespread existence of the present expenses, which attend thousands of job transfers annually (see pp. 13-14, *infra*), mark them as "ordinary and necessary." Welch v. Helvering, 290 U.S. 111, 114 (1933).

sale is fairly to recognize what tax authorities admit to be "the practical effects of the transaction."[6] Indeed, had IBM purchased Ritter's house from him directly at its appraised fair value to facilitate his transfer—as some companies do, *Management Record,* Dec., 1962, p. 17—the substance of the transaction would be identical, and yet in such instances there is no indication that the Service has ever questioned the inclusion of the full payment as amount realized under section 1001.

The Court of Claims' interpretation of the Code gives rise to a direct conflict with the Tax Court. That court has flatly held that reimbursements for move-related expenses due to an employer-caused transfer are *not* includible in income. *John E. Cavanagh,* 36 T.C. 300 (1961), *nonacq.,* 1962-2 C.B. 6; *Homer H. Starr,* 46 T.C. 743 (1966).[7] The reimbursed expense

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[6] S. Rep. No. 830, 88th Cong., 2d Sess. 129 (1964). See also Tocker, Loss on Sale of Residence Reimbursed by Employer, 19 Tax L. Rev. 527, 532 (1964): "[T]he view that the reimbursement of the loss is a restoration of capital is economically more realistic. . . . [T]he reimbursement is not dependent on achievement or work performed of any sort." The Tax Court similarly classed house loss reimbursements as amount realized for more than fifteen years. Otto Sorg Schairer, 9 T.C. 549 (1947). It has reversed its position despite several dissents including that of Judge Raum. Harris W. Bradley, 39 T.C. 652, aff'd, 324 F.2d 610 (4th Cir. 1963).

[7] *Starr* is now pending on appeal in the Tenth Circuit. While there is court of appeals precedent favoring the Service, notably a decision contrary to *Starr* and *Cavanagh,* England v. United States, 345 F.2d 414 (7th Cir. 1965), cert. denied, 382 U.S. 986 (1966), the Tax Court in *Starr* expressly declined to follow *England.* 47 T.C. at 748. Other decisions also lend some support to the Service on various points, *e.g.,* Commissioner v. Mendel, 351 F.2d 580 (4th Cir. 1965) (deductibility), but the Government's assertion below of broad court of appeals' support for its views is based on cases that are for the most part distinguishable and did not, in any event, give the issues the consideration they deserve.

items held excludable in those cases are not distinguishable, as the Service itself has declared, from those the lower court has included in income in this case.[8] As the Tax Court *en banc* said in *Starr,* "[W]here the transfer of an existing employee is solely at the behest of the employer and where the cause of the temporary [reimbursed] expenditure is outside the control of the employee, the expenses are incurred primarily for the benefit of the employer." 46 T.C. at 747. The Tax Court, the forum most expert in tax matters, has given the current problem by far the most careful analysis, and this Court has stressed the deference due to it on questions of tax law as well as of fact. *Trust of Bingham* v. *Commissioner,* 325 U.S. 365, 371 (1945); *Dobson* v. *Commissioner,* 320 U.S. 489, 502 (1943). The conflict itself, therefore, is a powerful reason for review.[9]

Certiorari is further justified by the striking inconsistency of the Service's position which has now been sanctioned by the court below. In a long-standing revenue ruling adhered to in this very case, the Service concedes that no gross income results from employer

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[8] The pertinent expenses were unusual temporary living expenses at the new location, in one case incurred because household goods were in transit and in the other because the new house was not ready for occupancy. 36 T.C. at 301; 47 T.C. at 744. The Service has said "there is nothing in the character . . . [of such expenses] which is different" from the type involved here. Rev. Rul. 65-158, 1965-1 C.B. 34, 35.

[9] It is noteworthy that the courts of both Canada and England have concluded that reimbursements for loss or expenses in a change of houses due to an employer-directed transfer are *not* includable in income. Ransom v. Minister of National Revenue, 67 CCH Dominion Tax Cas. 5235 (Can. Exch. 1967); Hochstrasser v. Mayes, 38 Tax Cas. 702 (H.L. 1959).

reimbursement for the cost of transporting family and goods or for meals and lodging en route where transfer is required. Rev. Rul. 54-429, 1954-2 C.B. 53. It seeks to distinguish such reimbursements from all other move-occasioned expense reimbursements on the singular ground that the former cover "direct" expenses and are not income while the latter relate to "indirect" expenses and are therefore taxable as ordinary income. This improvised distinction is as inaccurate in fact as it is unjustified by anything in the Code, the trial commissioner having expressly found that *all* Ritter's disputed expenses were caused by the move as their very nature indicates (p. 24a, *infra*). No doubt such an arbitrary line might be drawn by a legislature but, as Judge Davis' dissent said in considering deductibility, "I can make no distinction, as a judge, between 'direct' and 'indirect' moving expenses . . ." (p. 16a, *infra*). The only opinion to consider in detail the Service defense of its artificial labeling demolished the attempt. *Homer H. Starr,* 46 T.C. 743, 746 (1966). Indeed, until recently the Service itself, despite its 1954 ruling, *supra,* in practice treated both types of expense payment as equally excludable from income, the proper and consistent position to which the Service should be remitted. *Wall St. J.,* Dec. 9, 1965, p. 1.[10]

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[10] The Service continues in other contexts to exclude from income reimbursements for "indirect" expenses. Thus, it recently held not to be gross income a hospital's reimbursements for the motel bill and other temporary expenses of the taxpayer and his wife incurred because of "the requirements of the hospital" that their child be observed without them at home for a research project. Rev. Rul. 67-407, 1967 I.R.B. No. 47, at 7. The transferred employee is on the Service's theory taxable on reimbursement for similar temporary quarters, see n. 8, *supra,* that are no less caused by the "requirements" of his employer.

II. The Tax Consequences of Moving Expense Reimbursements Are of Importance to Thousands of Taxpayers Every Year and Have a Substantial Impact Upon the Personnel Policies of Industry, the Federal Government and the Military.

There can be few issues of tax law that affect so many persons. A recent estimate put at 400,000 the number of families moved interstate every year by employer transfers, *Wall St. J.*, Dec. 9, 1965, p. 1, a figure consonant with the extraordinary mobility of the American population, *Statistical Abstract of the United States: 1967*, tables 34-35, and certainly correct in indicating the order of magnitude of the transfers. A single large company such as IBM, which employed over 220,000 persons at the end of 1967, may relocate 3½ to 4 percent of its entire complement of employees each year (p. 27a, *infra*). And the trend in the number of transfers, spurred by increasing growth and decentralization of industry and rising costs of training new employees, is upwards.[11]

The number of companies recompensing employees for move-related expense and loss is constantly increasing, as more and more of them find it fair and necessary to adopt reimbursement policies. A recent survey of companies chosen from *Poor's Register of Corporations* showed that 77 percent maintained such policies, while among the largest companies with proportionately more employees the policies were almost universal. White, *supra* n. 11, at 9-10. Consequently, the question whether such reimbursements are taxable arises every year for a vast collection of industry-transferred taxpayers, almost certainly num-

[11] White, Reimbursing Personnel for Transfer and Relocation Costs 7, 9, 11 (1964: American Management Ass'n Research Study 67); Wall St. J., Dec. 9, 1965, p. 1.

bered in the hundreds of thousands. In addition, the companies themselves repeatedly face the parallel question whether to withhold taxes upon these payments or risk tax penalties imposed by the Service, and on this score, too, considerable confusion has prevailed among employers. *Financial Executive*, Dec., 1965, pp. 10, 20.

A still greater number of individuals in the federal civil and military service are afflicted with this tax dilemma. In 1966 Congress enacted Public Law 89-516, 89th Cong., 2d Sess., authorizing civil servants transferred by the federal government to be repaid for a number of specified, move-related expenses: included are costs of a house-hunting trip, certain expenses in sale and purchase of residences, and a temporary residence allowance. Each of these items is regarded by the Service as "indirect" and therefore taxable, Rev. Rul. 65-158, 1965-1 C.B. 34-35, and one or more is likely to be incurred by the 35,000 or so civil servants annually transferred. *Hearings, supra* n. 4, at 16, 53. Among military transferees, "indirect" moving expenses are compensated through a so-called dislocation allowance, and consistent with its practice toward company employees, the Service has also recently classed these dislocation payments as income. Rev. Rul. 64-153, 1964-1 C.B. (pt. 1) 70. On behalf of the 340,000 servicemen who received such allowances in fiscal 1965 alone, the Department of Defense has vigorously protested this interpretation of the law to the Service. See n. 4, *supra*.

As is obvious in the case of civil servants and military personnel but also true of industry transferees, the present tax falls mostly upon families of moderate income. Taking as examples two private

companies, a congressional witness testified that 85 percent of transferred employees in one and 91 percent in the other earned less than $15,000 a year, *Hearings Before the Senate Finance Committee on H.R. 8363,* 88th Cong., 1st Sess. 2008 (1963) (pt. 4); in IBM almost half the transferees earn $10,000 or less (pp. 30a-31a, *infra*). Most of these relocations, as here, effect no compensating promotion for the employee. *Wall St. J.,* Dec. 9, 1965, p. 1. Again as in this instance, a net loss is likely to be suffered on most moves, even if reimbursements are not taxed, because they rarely encompass all the consequent monetary costs.[12] To a family already suffering this financial drain, as well as the social difficulties of relocation, a tax upon the limited reimbursement the family receives from the employer merely to lessen the dollar loss is an especial hardship.

Not only employees but the industrial economy and federal personnel policy as well have a major stake in the present question whether reimbursement is to be impaired by taxation. As Congress clearly stated in allowing deduction of certain moving expenses under section 217, see p. 17, *infra,* national policy makes it "important to remove deterrents to the mobility of labor" in the interests of full employment.[13] The

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[12] *E.g.,* pp. 33a-34a, *infra.* Speaking of the reimbursements to soldiers, the Defense Department stated: "Placing a tax on their dislocation allowances serves only to reduce further an already inadequate allowance." Letter from Assistant Defense Secretary Paul, *supra* n. 4.

[13] H. Rep. No. 749, 88th Cong., 1st Sess. 59 (1963). See also H. Doc. No. 43, 88th Cong., 1st Sess. 13-14 (1963) (President's message); Hazelwood, Costs Incurred by an Individual Who Moves in Connection With His Employment: A Tax Analysis, 20 Tax L. Rev. 365, 370-71 (1965).

Chairman of the Civil Service Commission, supporting enactment of the above-described Public Law 89-516 to allow moving expense reimbursement to federal employees, emphasized that the Government is the "prime beneficiary" when its employees consent to transfers and reasonable mobility is "an essential element in a sound career service." *Hearings, supra* n. 4, at 6. Yet this mobility, whether in aid of government or the business economy, is materially impeded under the decision below: for the tax, as this case shows, can be extremely heavy for the moderately paid individual and may well decide him against a move. *E.g., Wall St. J.*, Dec. 9, 1965, p. 1. As the Senate Committee stated in approving the federal reimbursement bill, its "general purpose and effect . . . would be seriously diluted if the [reimbursements] authorized thereunder are deemed taxable as income." S. Rep. No. 1357, 89th Cong., 2d Sess. 5 (1966).

The instant case is an appropriate means of resolving the doubts and difficulties that the Service's position on reimbursements has engendered. The critical facts are not in controversy. Nor is there anything in the circumstances peculiar to Ritter on which the Service rests its case; rather it asserts generally that any moving expense or loss reimbursement to any taxpayer, apart from three expense items it labels "direct," must be taxed as ordinary income under its construction of the Code. Finally, Ritter has advanced below and so preserved for review the basic pertinent legal arguments, and the expenses and loss involved here are entirely typical of those suffered in thousands of relocations across the country. For example, preeminent among the reimbursed items in this case are the expenses and loss related to the change of houses;

a 1962 survey of large companies showed about 85 percent of the companies reimbursed for such losses, expenses, or both. *Management Record,* Dec., 1962, p. 20.

The importance of review by this Court is enhanced by Congress' declaration that the solution to the present reimbursement problem must be sought not in yet another amendment to the Code but through judicial elaboration of existing case law and statutes. In 1964, Congress added section 217 to the Code to equalize the tax treatment of reimbursed employees changing job locations and others who were not reimbursed; it did so by allowing the latter a deduction for unreimbursed expenses. Declining to settle what it recognized to be the dispute between the Tax Court and the Service on the reimbursements properly excludable from income, Congress limited its legislation to the three "direct" expense items concededly excludable even in the view of the Service. In so framing section 217, which consequently leaves the present problem wholly unaffected, the House and Senate Committees took pains to state that:

> "the question of whether the exclusion [of reimbursements from income] for existing employees extends beyond these three categories is left for judicial interpretation." [14]

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[14] H. Rep. No. 749, 88th Cong., 1st Sess. 59 (1963); S. Rep. No. 830, 88th Cong., 2d Sess. 72 (1964). Consonantly, both Committees warned that "no inference should be drawn from [section 217] . . . that moving expense exclusions under existing law are necessarily limited to these three categories of [direct] expenses." H. Rep. No. 749, *supra,* at 59; S. Rep. No. 830, *supra,* at 71-72. The Senate would have made it clear that reimbursements for loss and expenses on the change of residence were not ordinary income, S. Rep. No. 830, *supra,* at 129-31, but the House Committee's refusal to legislate on the exclusion question at all prevailed. Conf. Rep. No. 1149, 88th Cong., 2d Sess. 49 (1964).

This legislative background all but rules out a statutory solution to the present question, despite some expressed sentiment in Congress favoring exclusion of "indirect" expense reimbursements from income. See nn. 6, 14, *supra*. Since the Tax Court has adhered to its ruling that "indirect" moving expense reimbursements are not income despite the nonacquiesence of the Service (p. 10, *supra*), litigation will proliferate indefinitely unless and until this Court gives its judgment. Tax Court decisions can be appealed in every circuit court in the country, and neither the Service nor the taxpayers are likely to change their positions until a conclusive resolution is attained. Moreover, additional thousands of taxpayers whose companies now withhold taxes on reimbursements under compulsion by the Service may well forego their claims and suffer irreversible damage through ignorance of the dispute or inadequate financial incentive to sue where the law is unclear and the sum in issue too small to warrant individual litigation.

In sum, as this Court stated in granting certiorari in the *Glenshaw* case itself: review is warranted because of "the frequent recurrence of the question and differing interpretations by the lower courts of this Court's decisions bearing upon the problem . . . ." 348 U.S. at 427.

CONCLUSION

For the reasons set forth, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 1968